THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION Nos.4101 OF 2005 AND 17166 OF 2006

DATED: -10-2007

WP.No.4101 of 2005

BETWEEN

Gali Tata Rao, S/o. Late Appanna,
Occ: Ex-Serviceman, R/o. R.H. Colony,
Vadlapudi, Visakhapatnam and others.

...PETITIONERS

AND

The Visakhapatnam Urban Development
Authority, Rep. by Vice Chairman,
Visakhapatnam and two others.

...RESPONDENTS

WP.No.17166 of 2006

BETWEEN

P. Appalaraju, S/o. Late Venkayya
Occ: Ex-Serviceman, R/o.45-47-61,
Akkayapalem, Visakhapatnam.

...PETITIONER

AND

The Government of Andhra Pradesh,
Rep. by its Principal Secretary,
(Revenue Assignment – I) Department,
Secretariat, Hyderabad and others.

...RESPONDENTS

COMMON ORDER:

The petitioners in W.P.No.4101 of 2005 seek a Writ of Mandamus to declare the action of the Visakhapatnam Urban Development Authority (VUDA) in interfering with their peaceful possession and enjoyment of the lands of an extent of Ac.04.95 cents; Ac.5.00 cents; Ac.04.70 cents; Ac.04.00 cents and Ac.0.88 cents in situated in Sy.Nos.385/1, 383/1, 385/2, 357/2 and 375/2 respectively situated at Kapuluppada Village, Bheemunipatnam Mandal, Visakhapatnam District, by erecting some boards mentioning as “land belongs to VUDA” as illegal and arbitrary and against the principles of natural justice.

2. It is stated that the aforesaid lands were assigned in their favour under the Ex-Servicemen quota by the then Mandal Revenue Officer, Bheemunipatnam Mandal vide proceedings D.R.No.225/1402 dated 20.10.1992; D.R.No.226/1402 dated 28.06.1993; D.R.No.225/1402 dated 20.10.1992; D.R.No.237/1102 dated 29.11.1992 respectively and since then they have been in continuous possession and enjoyment of the same. It is stated that the land assigned in favour of Ex-Servicemen can be permitted to be alienated after expiry of 10 years of assignment, therefore, they have made representations in 2004 seeking permission to alienate the said lands, but without considering and disposing the same, the respondents have started interfering with their peaceful possession and enjoyment of the said lands.

3. The petitioner in W.P.No.17166 of 2006 submits that he is also an Ex-Serviceman and an extent of Ac.3.25 cents was assigned in his favour under the Ex-Serviceman quota on 09.12.1985 under D.R.No.35/1395 in Sy.No.314 at Kapuluppada village and necessary entries have also been

made in the revenue records. Thereafter, he filed an application to permit him to alienate the said land but on the said application, the Collector, Visakhapatnam, issued an endorsement in Rc.No.6097/04/E1 dated 24.06.2006 rejecting the application for grant of No Objection Certificate for alienation of the said land on the ground the on verification of records the assignment with reference to D.R.No.35/1395 dated 09.12.1985 was not found in the Darkhast Register and no application of the petitioner is pending for assignment of land, therefore, the petitioner cannot be permitted to sell the said land. The petitioner questions the said order.

4. Counters have been filed by the Mandal Revenue Officer in both the writ petitions stating that none of the petitioners have been granted any patta and they were never assigned any land in Kapuluppada village and they were never granted any D Form pattas in any of the aforesaid survey numbers. The writ petitions have been filed based on fictitious documents and the applications of the petitioners were not at all registered in the Darkhast Register and the so-called D Form pattas are not genuine and they are fake one.

They have not been granted any assignment of land at any point of time and there are no proceedings issued by the respondents at any point of time granting pattas in respect of the said lands as alleged by the petitioners. The entire lands in the aforesaid survey numbers is Konda Poramboke and it is registered as assessed waste in the revenue records and the said land has not at all been assigned to anyone till date. Therefore, the petitioners are not entitled to hold, possess or alienate the said lands.

5. The only question that arises for consideration is as to whether there was any assignment of the land in favour of the petitioners. There is no recorded evidence as to whether the petitioners are Ex-Servicemen or not. There is no recorded evidence as to whether there were any applications from the petitioners and whether the prescribed procedure has been followed in assigning the said land to the Ex-Servicemen. If there is no valid assignment in favour of the petitioners the question of permitting them to alienate the lands does not arise. No record has been placed before this Court showing that the names of the petitioners have been incorporated in the revenue record of 10(1) settlement, fair adangal and adangal. However, with regard to the genuineness of the assignment proceedings, I am of the opinion that it is just and proper for the third respondent to conduct an enquiry after giving reasonable opportunity to the petitioners. Therefore, the disputed questions of fact cannot be decided in the writ petitions.

However, the writ petitions are disposed of directing the third respondent to conduct an enquiry after giving reasonable opportunity to the petitioners and decide as to whether the proceedings relied on by them in D.R.No.225/1402 dated 20.10.1992; D.R.No.226/1401 dated 28.06.1993; D.R.No.237/1102 dated 29.11.1992 and D.R.No.35/1395 dated 09.12.1985 are genuine or not and if they are not genuine the petitioners are not entitled for any relief. There shall be no order as to costs.

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V. ESWARAIAH, J

October 11, 2007
DSK